Indemnity Benefits

OVERVIEW:

This section outlines the various indemnity benefits an injured employee may be entitled to under the statute. It will detail the specific benefits and the proper forms that are required to be filed with the Department.

Once a claim has been determined to be compensable and medical evidence supports disability, the employee is entitled to indemnity benefits to compensate them for their work disability. If the employee is totally disabled from work, s/he is entitled to wage replacement benefits referred to as **temporary total disability** (TTD) compensation. If an employee returns to part-time or light duty employment and has not reached a medical end result, the employee is entitled to receive two-thirds of the difference between the gross wages from the part-time or light duty employment and the pre-injury average weekly wage. These benefits are referred to as **temporary partial disability** compensation (TPD).

Once the adjuster determines that the employee is no longer entitled to either temporary total or temporary partial disability benefits, they are required by law to notify both the employee and the Department of its intention to discontinue weekly temporary benefits by a Notice of Intention to Discontinue Payments (Form 27).

If an employee is left with a permanent impairment from their work injury, they are entitled to additional compensation which represents permanent loss of function, referred to as **permanent partial disability** compensation (PPD). An employee who is found **permanently and totally disabled (PTD)** is entitled to a minimum of 330 weeks. Those benefits continue unless and until the carrier provides evidence that the employee is able to obtain regular, gainful work.

If a work-related injury results in a fatality, death benefits are paid to the dependents of the deceased employee. These are called **death benefits.**

An employee receiving temporary total, temporary partial, permanent partial, permanent total, or dependents receiving death benefits on July 1 of each year may be entitled to an annual increase in the weekly compensation benefit rate. Notice is given annually by the Department of the July 1 adjustment. A Form 28 reflects the adjustment.

TEMPORARY DISABILITY BENEFITS:

TEMPORARY TOTAL DISABILITY

Temporary total disability benefits are payable when an injured employee has been totally **disabled for more than three calendar** days, including the date of injury, if the employee was not paid in full by the employer for the date of the injury. The three days need not be consecutive. If the employee continues to be disabled after the third day, for a period of seven consecutive calendar days or more, the employee shall be entitled to compensation retroactive back to the first three days. (Sections 642 and 650)

Temporary total disability benefits are based upon the injured employee's average weekly wage and their work week. If an employee's work schedule is five days a week, the daily rate must be calculated based upon a five day work week. If an employee's work schedule is 5 ½ days a week, the daily rate must be calculated based upon a six day work week. For example, an employee works 5 ½ days a week and becomes temporarily totally disabled for five weeks and three days. It has been determined the employee's weekly compensation rate is $229.00. Temporary total disability compensation owed would be for the five weeks (five weeks x $229.00 = $1,145.00) plus the three days ($229.00 divided by six = $38.17 x 3 = $114.51) for a total of $1,259.51.

The employee's benefit check shall be made out in the name of the employee and sent to the address designated by the employee.

If there is a lapse of six months or more between the date of injury and date of disability, the wages for both the 12 weeks prior to the date of injury and the date of disability must be requested from the employer and provided to the department. These wages must be compared and the *higher* average weekly wage shall be used. Also, when there are intermittent periods of disability where temporary disability, either total or partial, does not occur in a continuous period but occurs in separate intervals, each resulting from the original injury, compensation shall be adjusted, for each recurrence of disability, to reflect any increase in wages. For example, if an employee returns to work after a work injury, then, eight months later s/he again becomes totally disabled due to the same work injury, their wages for the 12 weeks prior to the second period of disability must be provided. The employee's average weekly wages from the two different periods of disability are compared and the higher of the two amounts must be used.

The form required by the department for temporary total disability is the Agreement for Temporary Total Disability Compensation (Form 21). In order to prepare the temporary total agreement, the adjuster must first obtain the following:

- Employer's First Report of Injury (Form 1)[from the employer]
- Wage Statement (Form 25) [from the employer]
- Certificate of Dependency and Employee Exemption Report (Form 10/10S) [from the employee]
- Weekly Net Income Worksheet (Form 25S) [completed by the adjuster]

With the above information and forms, the agreement can be completed.

Completing the Form 21 – Agreement for Temporary Total Disability Compensation

1. Complete the information in the upper right hand corner of the form.

2. Enter the employee's name, address, insurance carrier's name, date of injury, employer's name and address, injury description and first day of disability. If, for some reason, the first day of disability is not the date of the injury or the following day, any lapse in time needs to be clarified by submitting either a letter of explanation or making a notation on the agreement. An example of when this situation may occur is the employee who returned to work on the day following the injury and continued working for several days before becoming totally disabled. If the employee was paid in full for the date of injury, the first day of disability will be the following day or the day disability began. If the employee was not paid in full for the day of injury, the first day of disability would be the day of the injury.

3. A completed Form 25 (see Appendix 5) is required to calculate the employee's average weekly wage. Average weekly wages are computed in a manner best calculated to give the average weekly earnings of the worker during the 12 weeks preceding an injury. The Form 25 shall include 12 weeks of gross wages **prior** to the week of injury, unless the employee was employed for less than 12 weeks prior to the date of injury.

A. Do not include the week of the injury when determining the 12 week average. If the employer includes the week of the injury on the Form 25, an additional week of wages must be requested from the employer to make a total of 12 weeks of wages prior to the date of injury.

B. <u>Employed less than 4 weeks</u> – if so then comparable wages need to be requested. Do not combine comparable wages with the employee's actual wages when computing the average weekly wage. For example, if an employee has only been employed for two weeks and injures his/her back and the average weekly wage cannot be determined by using the two weeks worked, the 12 weeks of wages from a comparable employee must be requested and used. Do not use the two weeks of actual wages and 10 weeks of comparable wages. If there are no comparable employees, the employee's rate of hire will be used to determine the average weekly wage.

C. "<u>EXTRAS</u>" should always be indicated on the Wage Statement to include any bonuses and commissions paid to the employee. If the employee received room, board, lodging or other extras (electricity, fuel, etc.) during the 12 weeks prior to the date of injury, they shall only be included if the injured employee does not continue to receive that benefit after the injury. Example: A company vehicle is provided for work and personal use. If, following a work injury, the employer takes the company vehicle away, the employee no longer has the benefit of that vehicle for personal use. That vehicle usage value must be determined and included in the average weekly wage calculation.

D. <u>Exclude vacation weeks</u> or other weeks where the employee worked less than half time or when the employer had reduced operations. Example: If the employee was hired to work 40 hours a week and one week on the Form 25 indicates that only 18 hours were worked, that week would be omitted as it is less than one-half of the hours the employee was hired to work. The remaining weeks would be used to calculate the average weekly wage. If an employee is scheduled for a week of vacation, but instead works and receives vacation pay as well as regular wages for the hours worked, **only** the regular wages shall be included in the calculation of the average weekly wage.

E. <u>Tips</u>. The Wage Statement should include any tips earned during the 12 weeks prior to the date of injury.

F. "*On call*", "*as needed*", "*per diem*", and "*temporary agencies*", when calculating wages you must divide the total earned for the 12 weeks prior to the date of injury by the number of weeks worked. Example: if the employee worked a total of 5 weeks during the 12 weeks prior to the injury, add the earnings and divide by 5. For employees of a temporary agency be sure you include <u>all</u> earnings from <u>all</u> jobs during the 12 weeks.

In the case of National Guard wages, you take the total earnings for the 12 week period and divide by 12 in every case.

G. <u>Teacher</u>. To determine a teacher's wage the contract amount is divided by the number of weeks in the employment contract.

H. *Volunteer rescue, fire, or police* <u>personnel</u>, who are not otherwise employed, are paid a compensation benefit based on the average weekly wage of a *similar* employee in a paid position. The injured volunteer who is employed elsewhere and is able to continue working his/her regular job would not be entitled to compensation for the inability to continue the volunteer work.

I. "<u>Commissions</u>" paid during the 12 weeks prior to the injury are the only commission payments that shall be used to determine the average weekly wage. Do **not** include commissions that the employee receives after the injury date.

J. <u>Concurrent employment</u>. When an employee holds jobs with two employers at the time of injury, the average weekly wage from each job must first be calculated separately and then add the two together. (See 21 V.S.A. §650a)

After the Form 25 has been reviewed, taking into consideration the above facts, the gross wages are totaled and divided by the number of weeks used to compute the employee's average weekly wage. For example, if the employee worked 12 full weeks and earned $5,025, the average weekly wage is $418.75). **The employee's average weekly wage is to be noted on Line A of the Form 21.**

4. Once the employee’s average weekly wage is determined, the next step is to calculate the employee's weekly compensation rate. To do this, the Weekly Net Income Worksheet (Form 25S) is completed by obtaining information from the Certificate of Dependency and Employee Exemption Report (Form 10/10S), the Federal Income Tax Tables (Circular E, Employer's Tax Guide) and the Vermont Income Tax Withholding Tables.

For all injuries occurring before July 1, 1994, the compensation rate would be 66 2/3% of the average weekly wage. If the average weekly wage is less than the minimum compensation rate in effect at the time of the injury, the employee’s compensation rate is the average weekly wage. At no time can the employee's compensation rate exceed the average weekly wage.

For all injuries occurring on or after July 1, 1994, the compensation rate is determined by completing four steps. By following these four steps and using the following example, the employee’s compensation rate would result in the employee receiving the minimum compensation rate.

> <u>Example</u> - An employee is married or has a reciprocal beneficiary with one dependent child. The employee’s average weekly wage is $317.55. Two-thirds of $317.55 is $211.70, the minimum compensation rate in effect at the time of the injury is $219.00 and the weekly **net** income is $298.26
>
> Step 1 - Multiply the average weekly wage by 66 2/3%. Then determine whether the employee is entitled to two-thirds of the average weekly wage, the minimum or maximum compensation rate or the weekly net income. Please see the example of a properly completed Weekly Net Income Worksheet in Appendix 5.
>
> Step 2 - Refer to the Form 10/10S to determine if the employee is married, has a reciprocal beneficiary, or single and the number of dependent children, if any.
>
> Step 3 - Determine the weekly net income by completing the Weekly Net Income Worksheet and using the appropriate Federal and State Tax Guides for the corresponding year the wages were paid. **The IRS Circular E, Employer's Tax Guide can be obtained through your local Internal Revenue Service. The Vermont Income Tax**

Withholding Tables can be obtained by either writing to the Vermont Department of Taxes, 109 State Street, Montpelier, VT 05609-1401 or by calling (802) 828-2515.

Step-by-step instructions are provided for determining the weekly net income. <u>Note first, however, weekly net income calculations are only necessary when the employee's average weekly wage is $320 or less</u>:

A. Complete the top right hand corner and the other required information located at the top of the form.

B. Line A. Enter the total gross wages from the wage statement.

C. Line B. Enter the number of weeks used to calculate the "total gross wage" on the wage statement.

D. Line C. Divide Line A by Line B and enter the average weekly wage.

E. Line D. Using the average weekly wage found on Line C and the information contained under "Part A" (Filing Status) on the Form 10/10S, enter the standard Federal Income Tax deduction using the appropriate table found in the IRS Circular E. The tax deductions can be found in the section marked "WEEKLY Payroll Period". Use either the single or married chart, depending on the employee's status found on the Form 10/10S under "Part A" (Filing Status). **NOTE: Be sure the number of withholding allowances at the top of the tax table corresponds with the number of dependents found on the Form 10/10S which shall include the employee, spouse, reciprocal beneficiary and dependent children.**

F. Line E. Subtract Line D from Line C and enter the result.

G. Line F. Using the average weekly wage found on Line C and the information contained under "Part A" (Filing Status) on the Form 10/10S, enter the standard State Income Tax deduction using the appropriate table found in the Vermont Income Tax publication. The tax deductions can be found in the section marked "Vermont Wage Bracket Withholding Charts". Use either the “Single Weekly” or “Married Weekly” chart, depending on the employee's status found on the Form 10/10S under “Part A” (Filing Status). **NOTE: Be sure the number of withholding allowances at the top of the tax table corresponds with the number of dependents found on the Form 10/10S which shall include the employee, spouse, reciprocal beneficiary and dependent children.**

H. Line G. Subtract Line F from Line E and enter the result.

I. Line H. Using the average weekly wage found on Line C, enter the standard social security tax deduction. The tables in the IRS Circular E Tax Guide from the 1994 publication must be used to determine the amount of social security and Medicare tax deductions. The average weekly wage of $317.55 will be used for the following instructions. The average weekly wage is divided into two parts, by the hundred dollar amount of $300 and the remaining amount of $17.55. Using the social security tax table from the 1994 tax guide, find the “hundred dollar” tax table which is found on the last page on the bottom right hand corner. The amount of taxes to be deducted for the $300 of the $317.55 average weekly wage is $18.60. Next, the taxes to be deducted for the remaining amount of $17.55 is determined by finding the appropriate range on the tax table which is between $17.50 and 17.67. The amount of taxes to be withheld is $1.09. Adding the $18.60 and the $1.09 together, the total amount of social security taxes to be deducted is $19.69.

J. Line I. Subtract Line H from Line G and enter the result.

K. Line J. Using the average weekly wage found on Line C, enter the Medicare Tax deduction presently found in the 1994 IRS Circular E. The same procedure detailed above should be followed to determine the Medicare Tax deduction. Using the average weekly wage of $317.55, that amount must be broken down by the hundred dollar amount of $300 and the remaining amount of $17.55. Using the Medicare tax table from the 1994 tax guide, locate the “hundred dollar” tax table which is located on the bottom right hand corner of the Medicare tax table. The amount of taxes to be deducted for the $300 of the $317.55

average weekly wage is $4.35. Next, the taxes to be deducted for the remaining amount of $17.55 is determined. Locating the appropriate range on the tax table which is between $16.90 and $17.59 the amount of taxes to be withheld is $.25. Adding the $4.35 and $.25 together, the total amount of Medicare taxes to be deducted is $4.60.

L. Line K. Subtract Line J from Line I and enter the result.

M. Line L. To calculate the Earned Income Credit (EIC) you must determine if the employee is entitled to this benefit. The employee must be married, have a reciprocal beneficiary, or be single with dependent children. If the employee is entitled to this benefit, use the average weekly wage and refer to the IRS Circular E publication in the section marked "Tables for Wage Bracket Method of Advance EIC Payments, Weekly Payroll Period, Single, Married or Civil Union". Then enter the appropriate earned income credit.

N. Line M. Add Line L to Line K and enter the result. *This is the employee's weekly net income.*

NOTE: When the Wage Statement contains wages from two different years, IE, December of 1996 and January of 1997, Lines A through L must be completed separately for each year. To calculate weekly net income when wages are paid for two different years on the wage statement, multiply the result on Line L by the number of weeks on Line B for each year. Combine the totals for each year and divide by the total of combined weeks. This is the employee's weekly net income.

Step 4 - Once the Form 25S is completed, the weekly net income needs to be compared with 66 2/3% of the average weekly wage, taking into consideration the minimum and maximum rates. The employee's weekly compensation rate shall be the lower amount of these rates. **This should be noted on Line B of the Form 21.**

5. Enter the total number of dependents multiplied by $10 on Line C on the Form 21. A dependent has been determined to be a child under the age of 21

years and dependent upon the injured employee. For example, if an employee has a child living at home who is 19 years old and attending school, the child is considered a dependent. **NOTE: The injured employee is entitled to the dependency allowance provided the weekly benefits shall not exceed the employee's weekly net income and provided no other injured worker is receiving the same benefits on behalf of the dependent child or children.**

6. Add Lines B and C to get the employee's total weekly compensation rate. **IMPORTANT: If the employee is receiving either weekly net income or average weekly wage, s/he is *not* entitled to receive the $10 dependency benefit. <u>*The employee cannot receive more than weekly net income or average weekly wage*</u>*.* However, there are instances where an employee can receive a partial dependency allowance. Such an instance is an employee who has an average weekly wage of $250 with two dependent children. Two-thirds of the average weekly wage is $166.67, the weekly net income has been determined to be $240.87 and the minimum compensation rate in effect at the time of the injury is $226. The employee is entitled to the minimum compensation rate of $226. Because the employee has two dependent children, s/he is entitled to a partial dependency allowance of $14.87 up to the weekly net income as the employee cannot receive more than his/her weekly net income.**

7. Enter the fourth day of disability in the section marked "DISABILITY".

8. The form must be signed by a licensed workers' compensation adjuster and the employee or his/her legal representative. If the employee refuses or fails to sign the Agreement for Temporary Total Disability, the adjuster should sign and submit the agreement to the Department along with copies of the correspondence showing that at least two attempts were made to obtain the employee's signature.

TEMPORARY PARTIAL DISABILITY

Often an injured worker regains his/her ability to return to work gradually. An employer is strongly encouraged to offer reasonable transitional and/or light duty work to those employees.

If the employee does return to work during their recovery period, but due to the injury is earning less than the average weekly wage, s/he may be entitled to **temporary partial disability** compensation. The department requires that an Agreement for Temporary Partial Disability Compensation (Form 24) be filed.

If the employee requires continued medical treatment for their work injury after they have returned to work, the employer may not withhold any wages for the employee's absence from work for medical treatment or to attend a medical examination. The employer may request the employee make reasonable efforts to schedule medical appointments around their light duty work schedule.

The Employer's First Report of Injury (Form 1) and the Wage Statement (Form 25) must be obtained before completing the Agreement for Temporary Partial Disability Compensation (Form 24). If the employee has received temporary total disability benefits, the Agreement for Temporary Total Disability Compensation (Form 21) can be used to obtain the average weekly wage.

Completing the Form 24 – Agreement for Temporary Partial Disability Compensation

1. Complete the information in the upper right hand corner of the form.

2. Enter the employee's name, address, insurance carrier's name, date of injury, employer's name and address, injury description, and first day of disability, if applicable.

3. In the section marked "WEEKLY COMPENSATION RATE" enter the employee's average weekly wage. If the employee earns a weekly fixed wage for his/her light duty employment, enter that amount in the space provided. However, if the wages vary, indicate "VARIES". Temporary partial benefits are calculated at the rate of 66 2/3% of the difference between the average weekly wage and the weekly gross earnings. (For example: If the employee's average weekly wage was $400 a week prior to the injury and the employee has returned to a

light duty job earning $200 a week, the temporary partial amount would be $400 - $200 = $200 x 66 2/3% = $133.33 owed for temporary partial disability benefits.)

4. In the section marked "TEMPORARY PARTIAL DISABILITY" note the eighth day of the waiting period or the day the employee returned to light duty work following temporary total disability, whichever is applicable.

5. The form must be signed by a licensed workers' compensation adjuster and the employee or his/her legal representative. If the employee refuses or fails to sign the Agreement, the adjuster should submit the agreement, with his/her signature along with copies of the correspondence showing at least two attempts were made to obtain the employee's signature, to the Department.

PERMANENT DISABILITY BENEFITS:

PERMANENT **PARTIAL** DISABILITY

When an employee reaches a medical end result (MER) or maximum medical improvement (MMI) of their work injury or condition, and a physician determines that there is a permanent impairment of a physical function, the employee may be entitled to further benefits. Benefits are paid in accordance with Section 648.

For all injuries occurring before April 1, 1995, permanent partial disability benefits must be calculated according to the specific body part injured.
Example: An employee injures a knee and a physician determined that they have a 10% impairment of the lower extremity which is equivalent to a 4% whole person impairment. The employee is entitled to a permanency benefit that is based upon their percentage loss of function. Here, the employee is entitled to 21.5 weeks of permanent partial disability benefits. (215 weeks x 10% = 21.5 weeks) (see Rule 11) **Whole person ratings do not apply to injuries before April 1, 1995.**

For all injuries occurring on or after April 1, 1995, permanent partial disability benefits must be calculated using the whole person rating system. Spine injuries must be calculated based upon 550 weeks. All other injuries are calculated based upon 405 weeks.

The most recent edition of the *American Medical Association* (AMA) *Guides To The Evaluation Of Permanent Impairment* must be used for the determination of whole person impairments. The physician providing an impairment rating should always indicate how calculated the impairment rating. For example, the physician should specify which chapter, table and page and/or other specific criteria they followed in arriving at the rating. If no explanation is provided, the adjuster should request more specific criteria from the physician.

In specific instances a permanent impairment rating may be apportioned. If the employee received permanent partial disability benefits from a *previous* workers' compensation claim, or if there is other valid evidence of a *prior* permanent impairment, the physician may apportion the current permanent impairment rating by specifying:1) the total current permanency; 2) the prior permanent impairment rating; and 3) indicating the current permanent impairment rating attributable to the current work injury. In order to apportion permanent disability benefits from a work injury prior to 4/1/95, the previous rating must be converted to the whole person and subtracted from the current whole person rating. The employee is owed the difference.

NOTE: Apportionment is only for cases where permanency benefits have already been rated and paid in a prior workers' compensation claim or when there exists “valid evidence” of a prior permanent impairment, as defined by the *AMA Guides*.

To calculate the number of weeks due for a spine injury together with an injury to another body part, the whole person rating for the spine must first be multiplied by 550 weeks. Then the whole person rating for the other body part is multiplied by 405 weeks and the two are added together. The total number of weeks is due the employee. (For example, 15% whole person for the spine x 550 weeks = 82.5 and 20% whole person for the lower extremity x 405 = 81 + 82.5 = 163.5 weeks of permanent partial disability benefits due the employee.) (See Rule 11a)

The carrier must inform the employee of his/her right to obtain at least one permanency examination and impairment rating, at the carrier’s expense, from the *treating physician*. If the employee’s treating physician does not perform impairment ratings, the employee should either request a referral to a physician or choose another physician to perform the impairment rating. The carrier also has the option to obtain a rating from a physician of its choice.

NOTE: The insurance carrier may request that the employee attend a medical examination at reasonable times and places.

Note: *weekly net income* applies **ONLY** to temporary total benefits. If the employee's temporary total compensation is the weekly net income, the permanent partial disability benefits must be recalculated to reflect the compensation rate the employee is entitled to for permanent partial disability purposes. (For example, the average weekly wage is $200 and the employee is receiving the weekly net compensation rate of $164.70 for temporary total purposes, permanent partial benefits would be paid at the rate of $200. If the average weekly wage is $253, the permanent partial disability compensation rate would be paid at the current minimum compensation rate in effect or two-thirds of the average weekly wage, whichever is higher.) (See Rule 15)

Permanent partial disability benefits should be initiated after the employee has reached medical end result and permanent impairment has been assessed. If the employee lost time from work, has reached a medical end result and a Notice of Intention to Discontinue Payments has been properly filed, temporary total disability benefits cease and permanent partial benefits begin.

When paying permanent partial benefits through July 1 of each year, the compensation rate must be adjusted to reflect the annual cost of living adjustment (COLA) on the Notice of Change in Compensation Rate (Form 28).
<u>Example</u>: Permanent partial benefits begin on May 1, 1996, for a total of 25 weeks. On July 1, 1996, the compensation rate would increase by the annual COLA and the remaining weeks are paid at the new rate. (Section 650(d), Rule 16)

Prior to preparing the Agreement for Permanent Partial Disability (Form 22), the following Forms must be sent to the Department:

For "no lost time" claims, it is necessary to have the Employer's First Report of Injury (Form 1), Wage Statement (Form 25) and the medical documentation supporting the percentage of permanent impairment.

For lost time claims, it is necessary to have the Employer's First Report of Injury (Form 1) and the appropriate forms submitted for lost time wages, which may include the Certificate of Dependency and Employee Exemption Report (Form 10/10S), Wage Statement (Form 25), Weekly Net Income Worksheet (Form 25S), Agreement for Temporary Total Disability Compensation (Form 21), Agreement for Temporary Partial Disability Compensation (Form 24), Notice of Intention to Discontinue Payments (Form 27) and Notice of Change in Compensation Rate (Form 28) as well as the medical documentation supporting the percentage of permanent impairment.

Completing the Form 22 – Agreement for Permanent Partial Disability

1. Complete the information in the upper right hand corner of the form.

2. Enter the employee's name, address, insurance carrier's name, date of injury, employer's name and address, injury description, and first day of disability. If there is no lost time, you need to indicate "N/A" or "Not Applicable".

3. In the event there is more than one injury in the claim it is important to specify each injury. Even if there is more than one injury only <u>one</u> Form 22 is filed. The form should specify the different injuries and permanency for each.

4. In the section marked "WEEKLY COMPENSATION RATE" enter the employee's average weekly wage in the first line. In the second line the compensation rate entered **shall** be either two-thirds of the employee's average weekly wage or the minimum or maximum compensation rate in effect, whichever applies. However, if there has been more than one period of disability, enter the average weekly wage and compensation rate (either two-thirds or the minimum or maximum compensation rate in effect) for the *last* period of disability. Enter the updated compensation rate to reflect any cost of living increases.

5. In the section marked "PERMANENT PARTIAL DISABILITY", enter the beginning date of permanent partial benefits. That date will be one of the following:

    1. If the employee received TTD (temporary total disability) or TPD (temporary partial disability) benefits and a Form 27 was filed due to **medical end** this date will be the effective date of the discontinuance.

    2. If the employee did not receive TTD (temporary total disability) or TPD (temporary partial disability), the date of the medical report indicating **medical end result** will be used in this instance.

3. If the employee has received TTD (temporary total disability) and TPD (temporary partial disability) benefits but has since had a successful return to work, the date of the medical report indicating **medical end result** will be used in this instance.

4. In the next space, enter the total number of permanent partial weeks owed to the employee. On the next few lines enter the percentage of impairment given by either the treating doctor, the carrier's physician or both, and the body part or parts affected.

5. The form must be signed by a Vermont-licensed workers' compensation adjuster and the employee or his/her legal representative. If the employee fails or refuses to sign the agreement, the insurance carrier needs to submit an agreement with the adjuster's signature, along with copies of the correspondence showing the two attempts made to obtain the employee's signature. **NOTE:** If the employee fails to sign the agreement, the carrier must continue payments up to the amount the carrier believes is correct. Generally this is the amount of permanency determined by the employer/carrier's independent medical examiner.

<u>LUMP SUM REQUESTS</u>: Upon written notice from the employee, permanent disability benefits may be paid in a lump sum. (See 21 V.S.A. § 652 and Rule 19)

The employee's request should specify the benefit, the lump sum amount requested and the reason(s) for the request. Rule 19 details when lump sum awards are approved. All parties must have an opportunity to be heard on this issue. The adjuster should write to the department and indicate whether or not the carrier agrees to a lump sum payment and the amount agreed to. The department generally approves of lump sum payments when both parties register agreement.

A lump sum may be <u>ordered</u> without the carrier's agreement in limited circumstances. Factors which are positively considered in ordering include:

1) the employee (or his/her household) has another regular source of income;
2) the lump sum can hasten or improve employee's rehabilitation or recovery;
3) the lump sum can hasten or improve the employee's return to employment;
4) the lump sum is otherwise deemed in the employee's best interest.

If the employee dies from any cause other than the accident, the remaining permanent partial benefits due shall be paid to his/her dependents, as defined in 21 V.S.A. §§ 635 and 636. If there are no dependents, the remaining amount, but not exceeding $5,500 for burial and funeral expenses and expenses for out-of-state transportation of the deceased to the place of burial, not exceeding $1,000, shall be paid in a lump sum to the proper person.

If the employee dies from any cause other than the accident during the period of temporary total disability, and if the employee's physician is able to determine a percentage of permanent impairment resulting from the work-related injury, the employee's dependents as defined in §§ 635 and 636 are entitled to the payment of permanent partial disability benefits.

PERMANENT **TOTAL** DISABILITY

Benefits for permanent total disability are automatically payable for the following injuries: (See 21 V.S.A. 644)

1. total and permanent loss of sight in both eyes;

2. loss of both feet at or above the ankle;

3. loss of both hands at or above the wrist;

4. loss of one hand and one foot;

5. injury to the spine resulting in permanent and complete paralysis of both legs or of both arms or of one leg and of one arm; and

6. a head injury resulting in "incurable imbecility or insanity".

The commissioner shall consider other specific characteristics of the claimant, including the claimant's age, experiences, training, education and mental capacity when determining permanent total claims.

Permanent total disability benefits may be payable for other injuries if the injury or the combination of the injury and other characteristics render the employee unable to perform regular gainful employment (See Rule 19). A Vocational Rehabilitation Assessment and a Functional Capacity Examination

are advised to determine the totality of the disability.

Example: employee suffers a serious back injury, not resulting in paralysis, but also develops serious psychological problems as a result of their physical injury and as a result is unable to return to regular gainful employment.

An employee who is found permanently totally disabled (PTD), shall first receive payments for temporary benefits until a medical end result has been reached or the employee has demonstrated an ability to return to work. A Notice of Intention to Discontinue Payments (Form 27) must be filed at this time. The employee is at this point entitled to a minimum of 330 weeks of benefits.

Example: employee injures his/her spine resulting in paralysis of both legs and is physically able to return to work. The employee is entitled to a minimum of 330 weeks of permanent total benefits.

After the carrier has paid 330 weeks of benefits they may obtain an evaluation of the employee’s medical condition and/or vocational prospects. If the carrier presents evidence that is persuasive that the employee is working or is capable of obtaining regular gainful employment, they may discontinue benefits by filing a Form 27 Notice of Intention to Discontinue Payments. If the Form 27 is approved then PTD benefits may cease.

Example: employee suffers a head injury resulting in inability for self-care or return to gainful employment. Upon reaching a medical end result and the filing of a Notice of Intention to Discontinue Payments, the 330 weeks of permanent total benefits begin. At the end of those 330 weeks, the employee is still unable to return to any type of gainful employment so permanent total benefits continue.

DEATH BENEFITS:

If a work-related injury results in a fatality, the employer shall pay compensation to the spouse, reciprocal beneficiary or to dependents as defined in the statute as children, dependent parents, dependent grandparents, dependent brothers and sisters or dependent grandchildren. The employer shall file the Employer's First Report of Injury (Form 1) and the Report of Fatal Accident (Form 4).

If there are no dependents, the personal representative shall receive burial and funeral expenses not to exceed $5,500 and expenses for out-of-state transportation of the deceased to the place of burial, not to exceed $1,000. (Effective July 1, 1999 the contribution to the Second Injury fund is terminated as the fund has been eliminated.) (See 21 V.S.A. §632, §634 & §635)

If there are dependents, benefits are paid as follows:

1. To the spouse or reciprocal beneficiary, if there are no dependent children, sixty-six and two-thirds percent (66 2/3%);

2. To the spouse or reciprocal beneficiary, if there is <u>one</u> dependent child, seventy-one and two-thirds percent (71 2/3%); or if there are <u>two or more</u> dependent children, seventy-six and two-thirds percent (76 2/3%);

3. If there is no spouse or reciprocal beneficiary, but a dependent child or children, then to the child or children, the amount or amounts payable to a spouse or reciprocal beneficiary with the same number of dependent children, to be divided equally among the children if more than one;

4. If there is neither spouse, reciprocal beneficiary nor child, but there is a dependent father or mother, then to the parent, if wholly dependent, thirty percent (30%) or if partially dependent, twenty percent (20%) or if both parents are dependent, then half of the foregoing compensation to each of them. If there is no such parent, but a dependent grandparent, then to every such grandparent the same compensation as to a parent;

5. If there is neither dependent spouse, reciprocal beneficiary, child, parent nor grandparent, but there is a dependent grandchild, brother or sister, or two or more of them, to the dependents fifteen percent (15%) for one dependent and five percent (5%) additional for each additional dependent, with a maximum of twenty-five percent (25%) to be divided equally between the dependents if more than one.

Compensation shall be payable during the following periods:

1. Compensation shall be paid to the spouse or reciprocal beneficiary until the age of 62 if at that time the spouse or reciprocal beneficiary is entitled to benefits under the Social Security Act;

2. until remarriage or civil union; or

3. until death, whichever occurs first;

However, <u>in no event shall the spouse or reciprocal beneficiary receive less than a sum equal to 330 times the *maximum* weekly compensation</u> except when compensation terminates due to death.

<u>Example</u>. Consider a spouse/reciprocal beneficiary who is age 30 at the time of the employee's death and never remarries. The spouse/reciprocal beneficiary receives death benefits of 66 2/3% of the average weekly wage until s/he reaches age 62 and is entitled to benefits under the Social Security Act. However, in no event shall the spouse/reciprocal beneficiary receive less than a sum equal to 330 times the maximum weekly compensation rate except when compensation terminates by reason of death.

4. to a child, during dependency as defined in 21 V.S.A. § 634;

<u>Example</u>. Consider a spouse/reciprocal beneficiary age 30 at the time of the employee's death with two dependent children and remarriage five years after the accident. Death benefits are paid at the rate of 76 2/3% of the average weekly wage until the remarriage. *However*, if the spouse/reciprocal beneficiary has not received an amount equal to 330 times the maximum weekly compensation rate, a lump sum payment of the remaining amount (330 times the maximum compensation rate) shall be paid to the spouse/reciprocal beneficiary. The two dependent children continue to receive death benefits at the rate of 76 2/3% until they are no longer dependent as defined in § 634.

Another example would be a spouse or reciprocal beneficiary of a deceased employee who has two dependent children and one of the children continues on to college following high school and the other child only completes high school. Death benefits will be paid at the rate of 76 2/3% of the average weekly wage until the child who completes only high school and reaches the age of 18 and is no longer dependent as defined in 21 V.S.A. § 634, at which time death benefits will decrease to 71 2/3% of the average weekly wage.

5. to a parent or grandparent, during the continuation of a condition of actual dependency, but in no case to exceed two hundred and sixty-four (264) weeks; and

6. to a grandchild, brother or sister during dependency as defined in 21 V.S.A. § 634, but in no case to exceed two hundred and sixty-four weeks (264).

Completing the Form 23 – Agreement for Compensation in Fatal Cases

Prior to preparing the Agreement in Regard to Compensation in Fatal Cases (Form 23), it will be necessary to obtain the Employer's First Report of Injury (Form 1), Report of Fatal Accident (Form 4) and the Wage Statement (Form 25).

1. Complete the information in the upper right hand corner of the form.

2. Enter the employee’s name, address, insurance carrier's name, date of injury, employer's name and address, injury description, and date of death if different from the date of injury.

3. In the section marked "DEPENDENTS" list all dependents, relationship and date of birth.

4. In the section marked "WEEKLY COMPENSATION" indicate the deceased's average weekly wage. Enter the percentage based on the number of dependents, the compensation rate and enter the date benefits begin.

5. The form must be signed by a licensed workers' compensation adjuster and the deceased's dependent or his/her legal representative.

NOTE: Death benefits must be updated each July 1 in accord with a Form 28 and death benefits **can** exceed the average weekly wage.

ANNUAL ADJUSTMENT OF WEEKLY COMPENSATION:

The annual adjustment of weekly compensation is designed to reflect any cost of living increases so that such compensation continues to bear the same percentage relationship to the average weekly wage in the state.

On or before July 1, the commissioner shall announce the annual change in compensation rate and new minimum and maximum rates for the coming fiscal year. Any employee receiving temporary total, temporary partial, permanent partial, permanent total or dependents receiving fatal disability compensation on July 1, shall be entitled to an increase in his or her compensation rate in accordance with § 650(d) and Rule 16.

Prior to preparing the Notice of Change in Compensation Rate (Form 28), it will be necessary to obtain the Employer's First Report of Injury (Form 1) and the appropriate forms submitted for lost time wages, which may include the Certificate of Dependency and Employee Exemption Report (Form 10/10S), Wage Statement (Form 25), Weekly Net Income Worksheet (Form 25S), Agreement for Temporary Total Disability Compensation (Form 21), Agreement for Permanent Partial Disability Compensation (Form 22), Agreement for Temporary Partial Disability Compensation (Form 24), Agreement for Permanent Total Claims and the Agreement in Regard to Compensation in Fatal Cases (Form 23).

Completing a Form 28 – Notice of Change in Compensation Rate

1. Complete the information in the upper right hand corner of the form.

2. Enter the employee's name, social security number, employer name and average weekly wage.

3. Check the type of agreement involved

4. On line 1, enter the employee's compensation rate in effect June 30th of that year.

5. On line 2, multiply the compensation rate by the cost of living multiplier and enter the result.

A. Temporary Total Benefits: The cost of living increase cannot exceed the average weekly wage or the weekly net income, whichever is less.

B. Temporary Partial Benefits: The cost of living increase must be adjusted weekly if the employee's wages vary from week to week. Do not include dependency benefits.

C. Permanent Partial Benefits: The cost of living increase cannot exceed the average weekly wage and dependency benefits shall not be included.

D. If the employee is receiving either the minimum rate or maximum rate, it is not necessary to use the multiplying factor when determining the cost of living increase. The new minimum and maximum rates are set by the Commissioner each year and will be indicated on the Form 28.

E. In cases where fatal benefits are being paid, the benefits **CAN** exceed the average weekly wage.

6. On line 3, for temporary total disability benefits only, multiply the number of dependents, under the age of 21, by $10.

In cases involving fatal benefits, when a child is no longer considered a dependent as defined in § 634, the rate needs to be recalculated and reflected for each year that an annual increase has occurred since the date benefits commenced. For example, a spouse or reciprocal beneficiary with two dependents who are 15 years old and 8 years old at the time of the employee's death on June 15, 1994. Over the course of the next three years, annual increases are received on July 1. On July 1, 1997 the older child turns 18 and is employed. As of July 1, 1997 that child is no longer dependent and the spouse or reciprocal beneficiary and one remaining dependent will begin to receive 71 2/3% of the average weekly wage. The adjuster needs to complete and file new Forms 28 for the years beginning July 1, 1994 - July 1, 1996 to reflect the new rate of 71 2/3% to be paid beginning July 1, 1997 for the spouse or reciprocal beneficiary and one dependent.

7. On line 4, add lines 2 and 3 to get the new compensation rate.

8. The form must be signed by a licensed workers' compensation adjuster.

INTEREST AWARDS:

Pursuant to 21 V.S.A. § 664 annotations the Commissioner, or the Commissioner's designee, has the authority to order the payment of interest on awards for any lapse of time in the insurance carrier paying those benefits due. An "award" is defined as a benefit which is due by statute. The employer/insurance carrier is required by 21 V.S.A. § 662 to enter into an agreement, with the employee, in regard to the benefits due or deny the claim in writing. Absent a written denial of the claim an "award" has been made and interest may be assessed from the due date of the "award".

Interest computations under § 664 follow these procedures:

Example: Employee is due $250 a week in permanent partial disability benefits for a total of 52 weeks. The first payment was due on August 1, 1986. The statutory rate of interest is 12% per year.

Calculations:

$250 x 48 weeks = $12,000 (the amount of permanent partial disability benefits due for the period 8/1/86 through 6/30/87)

$250 x 1.0452 (annual cost of living adjustment multiplier) = $261.31

$261.31 x 4 weeks = $1,045.20 (the amount due for the remaining four weeks of permanent partial disability benefits due)

$12,000 + $1,045.20 = $13,045.20 (total amount of permanent partial disability benefits due)

**The last permanent partial disability check would be due on August 1, 1987, therefore, interest will be assessed for a period of 10 years.

$13,045.20 x 12% = $1,565.42 (interest due per year)

$1,565.42 x 10 years = $15,654.20 (total interest owed)

Disclaimer: Example provides generally guidance; not exact as to dates.